

High School Districts, Appeal from order denying petition
to create a high school district.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

IN RE THE PETITION FOR A)
PROPOSED NEW HIGH SCHOOL) OSPI 145-87
DISTRICT AT ROCKY BOY,)
MONTANA)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Appellant, the Rocky Boy community, appeals to the
Superintendent of Public Instruction from the Order of the Hill
County Superintendent of Schools, dated October 20, 1987, denying
the petition for the creation of a high school district.

A petition, correct as to form, to create a new high school
district pursuant to Section 20-6-325, MCA, was filed with the
Hill County Superintendent.

A hearing on the Rocky Boy petition was held on September
28, 1987, before the Hill County Superintendent. No challenge to
the legal sufficiency of the petition was raised. On October 20,
1987, the Hill County Superintendent issued her order denying the
petition.

On November 18, 1987, Petitioners appealed the order of the
Hill County Superintendent pursuant to Section 20-6-325(4) MCA.
A hearing was held on December 17, 1987.

The Superintendent of Public Instruction, having considered
the entire record of the hearing before the County
Superintendent, pertinent other material, and the evidence
received at the hearing before the Superintendent of Public

1 Instruction, now enters these:

2 FINDINGS OF FACT

3 1. The petition for the creation of the Rocky Boy High
4 School District was presented in proper form and met the
5 statutory requirements of Section 20-6-325, MCA.

6 2. The proposed high school district boundaries are
7 identical to the boundaries of the existing Elementary District
8 No. 87-J in Hill County.

9 3. There is an existing new facility designed to
10 accommodate approximate 125 students. No cost related to capital
11 outlay is required.

12 4. The creation of the district is in the best interests of
13 the residents of the proposed district, as shown by extensive
14 evidence and testimony.

15 5. There was no evidence or testimony provided which
16 indicated that the creation of the district was not in the best
17 interests of the residents of the proposed district.

18 6. Road and weather conditions and distances make it
19 difficult for students to attend the public high schools
20 currently available to them.

21 7. The distances to the public high schools currently
22 available make participation in extra curricular activities
23 difficult, if not impossible.

24 8. The quality of education will be improved by a high
25 school which is viewed as an integral part of the community and
is not viewed as a second rate Indian high school.

1 9. It is in the best interests of the residents of the
2 proposed district to be educated in a local high school as shown
3 by evidence regarding the decrease in dropout rate since the
4 establishment of the Rocky Boy Tribal High School, increased
5 parental participation and the opportunity for Indian students to
6 study their own heritage and culture in their own schools.

7 10. The State of Montana has a constitutional mandate in
8 Article X to provide equal educational opportunity for all
9 children and specifically recognizes the importance for the
10 creation of schools in Indian communities which maintain culture,
11 language and heritage.

12 11. Petitioners presented a detailed high school
13 educational plan that examined curriculum, special services,
14 staffing, transportation, food services, facilities and finance.

15 12. The Rocky Boy Tribal High School meets current state
16 accreditation requirements.

17 13. The creation of the high school district will generate
18 two costs associated with the county--namely teacher retirement
19 and transportation.

20 14. Rocky Boy Elementary District Superintendent Ed
21 Parisian testified that the additional transportation cost,
22 estimated at \$5,000, will be offset by reimbursements currently
23 being paid to the Box Elder School District. The cost of
24 transportation is minimal because the bus routes for the
25 existing elementary district will be used for the high school
district.

1 15. The additional retirement costs are estimated at
2 \$60,000. Hill County presently levies 29.91 mills for teacher
3 retirement. Current estimated lottery figures made part of the
4 record before the State Superintendent indicate that estimated
5 lottery monies will offset the costs concerning teacher
6 retirement. The projections received of the Office of Public
7 Instruction indicate that Hill County will receive \$161,625.90
8 from the lottery to offset costs of teacher retirement. Under
9 these projections the levies will be reduced 3.72 mills. The
10 State Superintendent has relied upon and has taken administrative
11 notice of the Hill County retirement estimates from 1987-88
12 budget data compiled April 21, 1988, by the Office of Public
13 Instruction.

14 16. P.L. 874 funding has been authorized through 1993. The
15 funding program has historically proven to be reliable. The
16 State Superintendent takes administrative notice that the Supreme
17 Court has ordered equalization of school funding. If the State
18 of Montana meets the federal standard and 874 funds are
19 equalized, under federal laws a portion of those 874 funds cannot
20 be equalized and will remain a funding source for Rocky Boy High
21 School.

22 17. Havre School District, the affected school district,
23 did not oppose the petition.

24 18. There was no testimony or evidence offered at the
25 hearing before the County Superintendent as to the effects of I-
105 and SB 71 to support the County Superintendent's finding or

1 conclusions. County Commissioner Keller is concerned about an
2 insufficient tax base and the potential costs to the county to
3 support a new high school district.

4 19. There was no evidence to support the finding that the
5 enactment of I-105 does not allow taxes to be raised to pay for
6 any additional costs associated with the creation of a new
7 district.

8 20. The County Superintendent has erred in her finding that
9 there is an inadequate tax base to support the proposed
10 district's share since the provisions of Section 20-6-325(8),
11 MCA, provide "...the taxable value of the taxable property of
12 the territory proposed to be included in the new district must be
13 at least \$1, unless 50,000 acres or more of such proposed new
14 district are nontaxable Indian land....".

15 21. There was no evidence to support the County
16 Superintendent's finding that the 1987 mills for retirement and
17 high school transportation budgets already exceed the 1986 level
18 allowed by law.

19 CONCLUSIONS OF LAW

20 1. The Superintendent of Public Instruction has
21 jurisdiction to determine this matter pursuant to Section 20-6-
22 325, MCA.

23 2. The standard for review of the decision of the County
24 Superintendent is found in Section 20-6-325(4), MCA.

25 3. The Superintendent has provided proper notice of the
hearing pursuant to Section 20-6-325, MCA, and has received

1 additional evidence by way of sworn testimony and submitted
2 documents in the record.

3 4. Section 20-6-325, MCA, allows the State Superintendent
4 to consider evidence presented at the County Superintendent's
5 hearing as well as any other pertinent material.

6 5. The decision of the County Superintendent is clearly
7 erroneous in view of the reliable, probative, and substantial
8 evidence contained in the entire record.

9 6. The findings of the County Superintendent relating to
10 advisability and best interests of the residents in the effected
11 district are affected by an error of law in that the limitations
12 in I-105 do not apply to taxes imposed for new taxing units.

13 7. The petition for the creation of a new high school
14 district meets the statutory requirements of the law.

15 8. It is advisable and in the best interests of the
16 residents of the proposed district that an order be issued for
17 the creation of the proposed high school district.

18 From the foregoing Findings of Fact and Conclusions of Law,
19 the Superintendent of Public Instruction now renders her:

20 ORDER

21 1. That the decision of the Hill County Superintendent
22 dated October 20, 1987, is reversed.

23 2. That the petition to create the Rocky Boy District is
24 granted.

25 3. That the boundaries of the new high school district will
coincide with the boundaries defined in the petition.

4. That this order is contingent upon the existing physical facility known as the Rocky Boy Tribal High School being deeded to the newly created high school district.

IT IS SO ORDERED.

DATED this 15th day of March, 1989.

Nancy Keenan
NANCY KEENAN
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

This is to certify that on this 15th day of March, 1989, a true and exact copy of the foregoing was mailed, postage prepaid to:

Charles E. Erdmann
Erdmann & Wright
P.O. Box 5418
Helena, MT 59604

Edward Parisian
District Superintendent
Rocky Boy Public Schools
Rocky Boy Route Box 620
Box Elder, MT 59521

Shirley Isbell
County Superintendent
Hill County
300 4th Street
Havre, MT 59501

County Commissioners
Hill County
County Courthouse
315 4th Street
Havre, MT 59501

Linda V. Brandon
Linda V. Brandon
Paralegal Assistant
Office of Public Instruction